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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/228,109	01/11/1999	MARTIN BRADY	0166	7301

7590 04/08/2004  
ROGER S DYBVIG  
22 GREEN STREET  
DAYTON, OH 45402

EXAMINER

PRONE, JASON D

ART UNIT	PAPER NUMBER
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3724

24

DATE MAILED: 04/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/228,109

Applicant(s)

BRADY, MARTIN

Examiner

Jason Prone

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3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 3-5 and 7-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3,4,7,8 and 10-15 is/are rejected.
- 7) ☒ Claim(s) 5 and 9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. The indication of allowability of claims 4, 8, 14, and 15 as set forth in the previous action is withdrawn and prosecution is reopened in view of the following new ground of rejection.

#### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 8, 10, 11, 14, and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. In regards to claims 8, 14, and 15, the phrase "a scissors", on line 4 of claims 14 and 15, is unclear. It is uncertain if it is the same "scissors" as disclosed on line 3 of claim 8.

5. In regards to claims 10 and 11, the phrase "a scissors", on line 2 of claim 11, is unclear. It is uncertain if it is the same "scissors" as disclosed on line 3 of claim 10.

#### ***Claim Rejections - 35 USC § 102***

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000.

Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

6. Claims 3, 4, 7, 8, and 10-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Brady et al.

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Brady et al. discloses the same invention including a household opening appliance comprising an electric can opener (Title), a jar opener mounted on the bottom wall of the housing (Fig. 13), a sheath for a scissors on the back of the housing (Fig. 10), a scissors holder within the sheath (Fig. 6), that the sheath is formed by the back wall of the housing and a cover member connected to the back wall (Fig. 6), that the scissors holder comprises a pair of cooperating clamp members for releasably retaining the scissors within the sheath (Fig. 6).

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 3, 7, and 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over the PRESTO CAN OPENER PLUS (previously cited and, hereafter, to be called Presto) in view of Davies (4,152,831) and Nielsen et al. (5,791,608). Presto teaches an electric can opener having substantially everything claimed – including a jar opener mounted on the bottom wall of the can opener. See page 8 of the instructions in Presto for the jar opener. Presto does not teach a scissors releasably retained to the can opener such as by a sheath. However, Davies teaches that a scissors-like tool, which one of ordinary skill in the art can call scissors, may be attached to any surface where it is convenient via a sheath in which the sheath allows access to the scissors. See col. 2, lines 26-30, and see col. 3, lines 30-31 in Davies. Nielsen et al. teaches that a scissors may be secured via a sheath to a home appliance such as a machine in the form of a sewing machine, a refrigerator, or a washer or a dryer. See col. 2, lines 26-34 in Nielsen et al. The Presto can opener presents convenient surfaces such as its sides, top, and back and is clearly a home appliance that can be defined as a machine. Therefore, to provide a scissors removably retained to the can opener in Presto via a sheath is suggestive from Davies since the can opener presents available, convenient surfaces. This is further made obvious by Nielsen et al. for teaching that it would have been obvious to provide a sheathed scissors on any convenient surface where it might be desired for use and wherein that surface is a machine in the form of a home appliance. Thus, clearly, the collective teachings of Davies and Nielsen et al. teach that it would have been obvious to provide a scissors, and a sheath for the scissors, on any available surface of an appliance where such scissors and sheath might be deemed

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useful or is considered a desirable location for the use of the scissors and sheath.

Since the Presto can opener is an appliance with available space, it would have been obvious to place a scissors and sheath on the can opener if one so desired. To place the sheath on the back of the housing of the can opener, as set forth in claims 3 and 7, would have been an obvious matter of choice of said available, convenient space as desired. Moreover, "back" can include several surfaces of the can opener. Further regarding claims 3 and 7, it is noted that the applied sheath of Davies includes various holders such as at 20, 21, 22, 23, or 36, or, 37, 38. Any of these holders would have been obvious in the combination to make the scissors readily removable, but secure, in its sheath.

#### ***Allowable Subject Matter***

9. Claims 5 and 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. Claim 15 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

11. Applicant's arguments with respect to claims 3, 7, and 10-13 have been considered but are moot in view of the new ground(s) of rejection. The Davies patent discloses, on lines 30-31 of column 3, that "the holder can be positioned exactly where it is most convenient" which includes the back of any appliance.

***Conclusion***

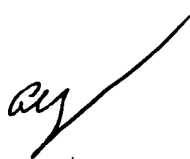
12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason Prone whose telephone number is 703-605-4287. The examiner can normally be reached on 7:30-5:00, Mon - (every other) Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 703-308-1082. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



JP  
March 31, 2004



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